

Graham B. LippSmith (SBN 221984)
g@lippsmith.com

MaryBeth LippSmith (SBN 223573)
mb@lippsmith.com

Jaclyn L. Anderson (SBN 258609)
jla@lippsmith.com

LIPPSMITH LLP

555 S. Flower Street, Suite 4400

Los Angeles, CA 90071

Tel: (213) 344-1820 / Fax: (213) 513-2495

Jason T. Dennett (WSBA #30686), *Pro Hac Vice*
jdennett@tousley.com

Kaleigh N. Boyd (WSBA #52684), *Pro Hac Vice*
kboyd@tousley.com

TOUSLEY BRAIN STEPHENS PLLC

1200 Fifth Avenue, Suite 1700

Seattle, WA 98101

Telephone: (206) 682-5600 / Fax: (206) 682-2992

Attorneys for Plaintiffs and the Putative Classes

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION**

CAROLYN CLARK, SHELBY COOPER,
SHARON MANIER, TARIKA
STEWART, and AQUILLA THOMPSON
individually, and on behalf of all others
similarly situated;

Plaintiffs,

v.

INCOMM FINANCIAL SERVICES,
INC., a Delaware corporation,

Defendant.

Case No. 5:22-cv-01839-JGB-SHK

**SECOND AMENDED CLASS
ACTION COMPLAINT FOR:**

**1) VIOLATIONS OF THE
CONSUMERS LEGAL
REMEDIES ACT
CAL. CIV. CODE §§ 1750,
ET SEQ.;**

- 2) **VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW CAL. BUS. & PROF. CODE §§ 17200 *ET SEQ.* – UNLAWFUL BUSINESS PRACTICES;**
- 3) **VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW CAL. BUS. & PROF. CODE §§ 17200 *ET SEQ.* – UNFAIR BUSINESS PRACTICES;**
- 4) **VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW CAL. BUS. & PROF. CODE §§ 17200 *ET SEQ.* – UNFAIR BUSINESS PRACTICES; AND**
- 5) **UNJUST ENRICHMENT**

DEMAND FOR JURY TRIAL

1 **SECOND AMENDED CLASS ACTION COMPLAINT**

2 Plaintiffs, individually and on behalf of the Classes defined below, allege
3 the following against Defendant InComm Financial Services, Inc., doing
4 business as Vanilla Gift (“Vanilla”), based upon personal knowledge with
5 respect to themselves and on information and belief derived from, among other
6 things, investigation of counsel and review of public documents as to all other
7 matters:

8 **NATURE OF THE CASE**

9 1. Vanilla sells Visa and MasterCard pre-loaded virtual (“E-Cards”)
10 and physical debit cards (“Physical Cards”) online and in retail stores across the
11 country that it markets as “Gift Cards”.¹

12 2. E-Cards and Physical Cards (collectively “Cards”) have preloaded
13 funds of a specified amount (“Face Value”) from \$10 to \$500, available to be
14 used by whomever purchased or received the Cards.

15 3. Consumers who buy Cards (“Purchasers”) pay Vanilla the Face
16 Value plus a fee.

17 4. People who receive these Cards (“Recipients”) from Purchasers as
18 gifts report that their Cards have no value or less than Face Value. Purchasers
19
20

21 ¹ <https://www.vanillagift.com/> (last visited Mar. 29, 2023).

1 who use the Cards for their own purposes also report that their Cards have no
2 value or less than the Face Value.

3 5. Plaintiffs each purchased or received Cards that had purchasing
4 power less than the Face Value when they first attempted to use their Cards.

5 6. The Face Value of Plaintiffs' Cards was partially or completely spent
6 by unknown third parties ("Unauthorized Users") *before* Plaintiffs tried to use the
7 Cards.

8 7. Each Plaintiff asked Vanilla to reimburse them the full Face Value of
9 their depleted Cards. Vanilla did not do so.

10 8. Plaintiffs' experiences are not isolated incidents. Purchasers and
11 Recipients across the country report on multiple consumer websites that their
12 Cards contain less than Face Value and that their online Vanilla accounts show
13 Unauthorized User purchases against the Face Value of their Cards. They further
14 complain that Vanilla failed to reimburse them and that Vanilla's customer
15 service seemed intentionally designed to frustrate attempts to be reimbursed.

16 9. Through these complaints, Vanilla has known for years that the Face
17 Value of their Cards is insecure.

18 10. In continuing to sell Cards while knowing that the Face Value of
19 their Cards is insecure, Vanilla fraudulently omits three material facts.

20 11. First, Vanilla omits that Cards commonly have less purchasing
21 power than their Face Value at the time of purchase due to theft.

1 12. Second, Vanilla omits that Unauthorized Users exploit a specific
2 flaw in Vanilla's online security measures, detailed below, that allow them to
3 access and spend the Face Value of Plaintiffs' and Class Members' Cards before
4 Plaintiffs and Class Members can do so.

5 13. Third, Vanilla omits that it avoids reimbursing Purchasers and
6 Recipients for fraud losses when they occur.

7 14. Vanilla should have disclosed the facts in Paragraphs 11 through 13
8 above on the exterior of the packaging of Physical Cards and on the webpage²
9 through which Vanilla sells E-Cards.

10 15. Vanilla knows that no reasonable consumer would intentionally
11 gamble by buying a gift card that is particularly vulnerable to fraud and is,
12 therefore, likely to contain less than its Face Value, so Vanilla does not disclose
13 its security problems.

14 16. Vanilla could but does not implement additional security measures
15 that would decrease or eliminate Card fraud because those measures would
16 increase its costs and reduce its profits. So rather than protecting Purchasers and
17 Recipients, Vanilla chooses to secretly shift the risk of fraud loss to innocent
18 consumers.

19
20
21 ² https://www.vanillagift.com/catalog?type=email_animated (last visited Apr. 5, 2023).

17. Plaintiffs, on behalf of themselves and other similarly situated individuals who also purchased or received Cards, seek to recover economic losses from Vanilla for violation of applicable California consumer protection statutes and unjust enrichment.

PARTIES

18. Plaintiff Carolyn Clark (“Clark”) is a resident of Riverside County in the State of California. Clark purchased a \$100 Vanilla E-Card online for her own use in 2021 or early 2022. She did not share her E-Card information with anyone else. When Clark tried to use the Face Value of her E-Card for the first time, it was rejected. Based on the facts explained herein, the only plausible explanation is that the Face Value of Clark’s Card was depleted by an Unauthorized User(s).³ Clark phoned Vanilla, and Vanilla told her to try using the E-Card again in a few days because some “issues” should be resolved by then. Clark tried using her E-Card again; again, the E-Card did not work. Clark called Vanilla several times since her card was rejected a second time, but Vanilla never restored the Face Value of her E-Card. Clark has never been able to use the Face Value of the E-Card she purchased. Clark estimates that she spent approximately 30 hours in total trying to recoup the funds she paid for her E-Card.

³ No one has reported that Vanilla never loaded the Face Value onto the Cards in the first place.

1 19. Plaintiff Shelby Cooper (“Cooper”) is a resident of Riverside County
2 in the State of California. Cooper received seven Physical Cards as gifts from
3 family members in 2021. After that transfer of ownership, which Vanilla
4 explicitly anticipates by marketing Cards as gifts, Cooper had the exclusive right
5 to spend the Face Value of her seven Physical Cards. Three of Cooper’s Physical
6 Cards had purchasing power less than the Face Value when she went to use them
7 for the first time. Her fourth Physical Card had no value. Cooper did not share her
8 Physical Card information with anyone else, nor were those Physical Cards out of
9 her possession at any time. The only plausible explanation is that the Face Value
10 of Cooper’s Cards was depleted by an Unauthorized User(s). The total amount of
11 Face Value missing from Cooper’s Physical Cards was approximately \$300.
12 Plaintiff Cooper wants to and would use Vanilla Cards in the future if Vanilla
13 remedied its security practices and/or reimbursed customers when fraud occurs.

14 20. Plaintiff Sharon Manier (“Manier”) is a resident of Riverside County
15 in the State of California. Manier received a \$100 Vanilla Physical Card as a gift
16 in December 2021. After that transfer of ownership, which Vanilla explicitly
17 anticipates by marketing Cards as gifts, Manier had the exclusive right to spend
18 the Face Value of her Physical Card. When she went to use the Physical Card at a
19 retailer for the first time, the Card was declined. Manier did not share her
20 Physical Card information with anyone else, nor was her Physical Card out of her
21 possession at any time. Manier learned that the Card did not have any funds on it

1 when it was declined, so she called Vanilla. Manier recalls that Vanilla indicated
2 that the lack of funds was a problem it could not, or would not, do anything about.
3 The only plausible explanation is that the Face Value of Manier's Card was
4 depleted by an Unauthorized User(s). Vanilla did not point Manier toward any
5 claims process or other way to try to recoup the Face Value of her Physical Card.
6 Plaintiff Manier wants to and would purchase and use Vanilla Cards in the future
7 if Vanilla remedied its security practices and/or reimbursed customers when fraud
8 occurs.

9 21. Plaintiff Tarika Stewart ("Stewart") is a resident of Riverside County
10 in the State of California. Stewart purchased a \$100 Vanilla Physical Card for her
11 son at WalMart in December 2021. Stewart's son reported to her that when he
12 attempted to use the Physical Card for the first time, the Physical Card had only
13 about \$2.00 on it. The Physical Card was not out of his possession at any time.
14 Stewart called Vanilla and verified that the Face Value was depleted from the
15 Card by Unauthorized Users. Vanilla explained the funds were most likely
16 depleted due to fraudulent activity. Vanilla did not point Stewart toward any
17 claims process or other way to try to seek reimbursement from Vanilla for the
18 Face Value of the Physical Card she purchased. Stewart estimates that she spent
19 approximately 50 hours attempting to resolve the issue of depleted Face Value
20 with Vanilla. Plaintiff Stewart wants to and would purchase and use Vanilla
21

1 Cards in the future if Vanilla remedied its security practices and/or reimbursed
2 customers when fraud occurs.

3 22. Plaintiff Aquilla Thompson (“Thompson”) is a resident of Los
4 Angeles County in the State of California. Thompson purchased a \$250 Vanilla
5 E-Card for her daughter in December 2021. Soon after receiving the E-Card, and
6 after attempting to use it for the first time, Thompson’s daughter reported that the
7 E-Card had no value. Thompson called Vanilla and verified that no funds were on
8 the E-Card. The only plausible explanation is that the Face Value of the Card
9 Thompson purchased was depleted by an Unauthorized User(s). Thompson called
10 Vanilla multiple times to have the issue rectified, unsuccessfully, and described
11 the process of trying to obtain a refund from Vanilla as nothing but the runaround.
12 Thompson was never provided with an E-Card that held the Face Value of the E-
13 Card she purchased, and she estimates having spent approximately 6 hours during
14 the course of one or two months trying to recoup the \$250 she spent on it.
15 Plaintiff Thompson wants to and would purchase and use Vanilla Cards in the
16 future if Vanilla remedied its security practices and/or reimbursed customers
17 when fraud occurs.

18 23. Each of the Plaintiffs and putative Class Members suffered injury
19 because the Card they purchased and/or received had charges made against it by
20 Unauthorized Users, and Vanilla did not refund the missing amount of Face
21 Value, or the fees associated with purchasing the Cards.

1 24. Defendant InComm Financial Services, Inc. (“Vanilla”), is a
2 Delaware corporation based in Atlanta, Georgia. Vanilla is the entity managing
3 the Card program.

4 **JURISDICTION AND VENUE**

5 25. This Court has original jurisdiction over this action under 28 U.S.C.
6 § 1332(d)(2) because: (i) there are 100 or more class members; (ii) there is an
7 aggregate amount in controversy exceeding \$5,000,000, exclusive of interest and
8 costs; and (iii) there is minimal diversity because at least one plaintiff and
9 defendant are citizens of different states. This Court also has supplemental
10 jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

11
12 26. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because
13 a substantial portion of the conduct described in this Complaint was carried out in
14 this district. Furthermore, Vanilla provides and markets its products and services
15 within this district, thereby establishing sufficient contact to subject it to personal
16 jurisdiction.

17 27. At all relevant times, Vanilla was directly engaged in the business of
18 marketing, issuing, and managing gift Cards that are the subject of this Complaint
19 throughout the United States and the State of California.

20 28. This Court has personal jurisdiction over Vanilla. Facts giving rise to
21 this action occurred in the State of California. Vanilla has been afforded due

process because it has, at all times relevant to this matter, individually or through its agents, subsidiaries, officers and/or representatives, operated, conducted, engaged in, and carried on a business venture in this State; provided services in this State; committed a statutory violation within this State related to the allegations made herein; and caused injuries to Plaintiffs and putative Class Members, which arose out of the acts and omissions that occurred in the State of California, during the relevant time period.

STATEMENT OF FACTS

A. Vanilla fails to secure the Face Value of Cards from widespread theft by Unauthorized Users.

29. Purchasers can buy Vanilla Cards from retail stores or online.

30. Purchasers select a Card with a Face Value of between \$10 and \$500, and that amount is loaded on the Card to be used for future purchases.

31. Vanilla charges Purchasers a fee of at least \$2.95 for each Card purchased, whether purchased in a retail store or purchased online directly from Vanilla. These fees can increase depending on the amount being purchased for the Face Value of the Card(s) and range from \$2.95 to \$9.95, depending on when the Cards were purchased, the gifted amounts, and the number of Cards purchased. So, for example, Vanilla may charge a purchaser of a \$25 Face Value Visa gift Card a total of \$29.95 (\$25, plus a fee of \$4.95), and charge a purchaser of a \$200 Face Value Visa gift Card a total of \$207.95 (\$200, plus a fee of \$7.95).

1 32. Vanilla retains the fees that it charges Purchasers. The fees are an
2 out-of-pocket cost to Purchasers, and those fee amounts are not available for use
3 on the Cards after purchase.

4 33. Purchasers can buy Physical Cards for set amounts at retail stores
5 such as drug stores, most often from a point-of-purchase display at a store
6 register. Packaging for Physical Cards displays the Face Value that will be loaded
7 on each Card when purchased, and that is the amount that should be available for
8 use by the intended Recipient.

9 34. As they sit on the rack, Physical Cards are worthless. If a thief were
10 to simply grab a handful and run out of the store, the stolen Physical Cards would
11 have no value.

12 35. A clerk at a retail store must activate Physical Cards at the time of
13 purchase for the Physical Cards to hold any value. Activation makes the Face
14 Value of Physical Cards ready to spend. The Physical Cards are then ready to use
15 within 24 hours with no additional activation needed.

16 36. Yet when Plaintiff Stewart's son and Plaintiffs Cooper and Manier
17 went to use their Physical Cards for the first time, all or a portion of the Face
18 Value had already been spent by Unauthorized Users.

19 37. Purchasers can also purchase virtual E-Cards of various
20 denominations at www.vanillagift.com.

1 38. At the time of purchase, Purchasers indicate the “Card Value” that
2 is to be loaded on the purchased E-Card⁴ and designate a Recipient to receive the
3 E-Card by email. When an E-Card is activated, the loaded Card Value, or Face
4 Value, is supposed to be available for use by the intended Recipient.

5 39. Vanilla’s online database contains sixteen-digit E-Card account
6 numbers available to transmit to E-Card Recipients after purchase.

7 40. When a Purchaser buys an E-Card, Vanilla transmits one of those
8 existing account numbers to the designated Recipient.

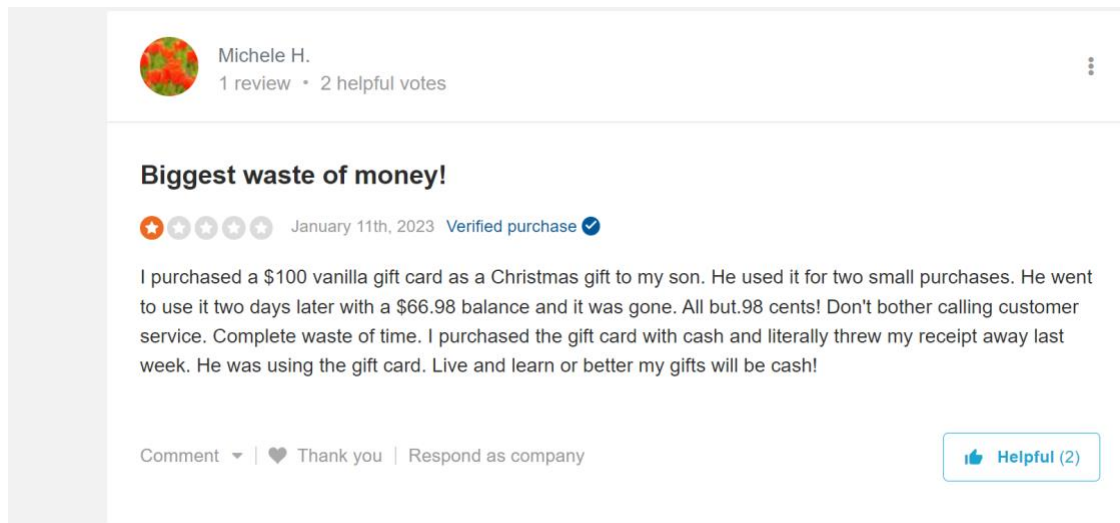
9 41. Vanilla sends Recipients of E-Cards an email that contains a link to
10 its website. The website then provides a sixteen-digit card number, an expiration
11 date, and a three-digit Card Verification Value (CVV) security code, and the E-
12 Card is activated.

13 42. But as with Physical Cards, the Face Value of Vanilla’s E-Cards are
14 frequently drained by Unauthorized Users before Purchasers and Recipients can
15 use the funds, just as Plaintiffs Clark and Thompson experienced.

16 43. Plaintiffs’ experiences were mirrored by Purchasers and Recipients
17 around the country, as they reported in online reviews. Examples of these
18 complaints and reviews are shown below.

19
20
21 ⁴ See, e.g., <https://www.vanillagift.com/gold-script> (last visited Mar. 30, 2023).

44. After 102 reviews, consumers rate Vanilla 1.17 stars out of a possible 5 on Sitejabber,⁵ a prominent online rating site backed by the National Science Foundation. The stories in the reviews mirror Plaintiffs' experiences. For example:



⁵ <https://www.sitejabber.com/reviews/vanillagift.com> (last visited Mar. 29, 2023).

Scammers! Stealing your money! The worst system in the world

February 24th, 2023 Verified purchase ✓

Scammers! I bought vanilla gift card in Walgreens 100\$ and could not access the money when I went online to check balance SYSTEM ERROR they steal your money!

I did call the phone on the back of the card i was on the line for 40 minutes to get connect and the customer service told me that someone else try to claim the money? And make a problems with giving me back my money! I have prove that i bought the card I have Receipt! Never ever buy again.! Stole my 100\$ and waist my time on the phone biggest scammers

Tip for consumers:

Scammers ! Stole 100\$ from me !

Never ever buy the vanilla gift card product! They steal money & waist of time scammers !

Products used:

Vanilla gift cards 100\$

Service

Value

Returns

Quality

[▲ Show less](#)


Melissa B.

1 review • 5 helpful votes

**I lost \$470 and they let it happen!**

January 12th, 2023 Verified purchase ✓

I purchased one of their cards and put \$500 on it. Within an hour someone had made a purchase of \$470 at an Apple store in CA and cleared my balance. I reported it immediately though it took 40 mins on hold to speak to someone only to be told there was nothing that could be done because the purchases made with the cards are considered as cash. I would never suggest anyone purchase on of these cards.

Products used:

Vanilla Visa Gift Card

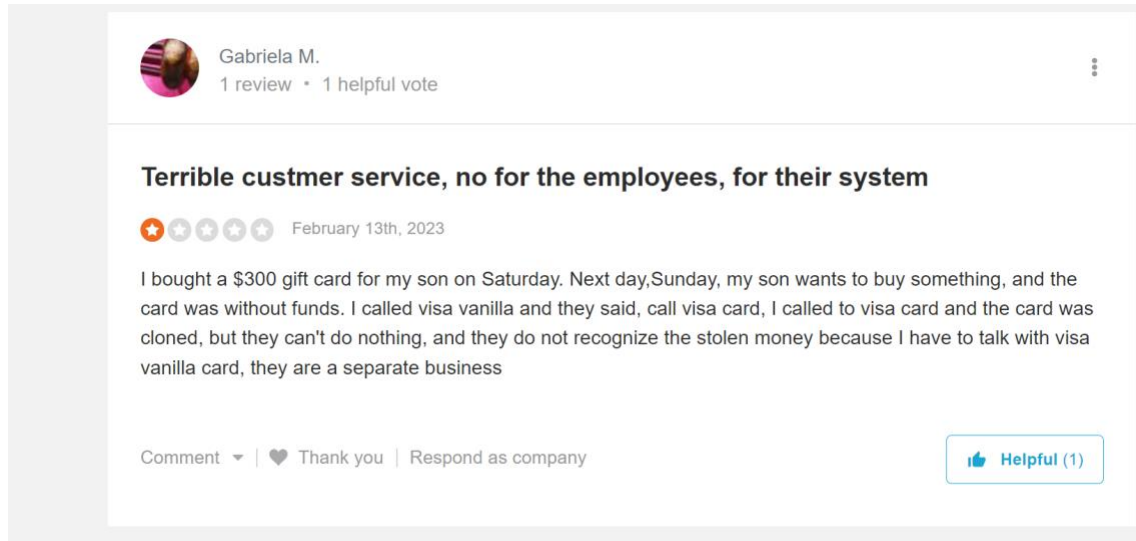
Service

Value

Quality

[▲ Show less](#)
[Comment ▼](#) | [♥ Thank you](#) | [Respond as company](#)

Helpful (5)



45. After 288 reviews, consumers rate Vanilla 1.1 stars out of a possible 5 on Trustpilot,⁶ another leading online rating site. The stories in the reviews mirror Plaintiffs' experiences. For example:

⁶ <https://www.trustpilot.com/review/vanillavisa.com> (last visited Mar. 29, 2023).



Justin Carr

2 reviews US



Mar 2, 2023

0.0 STARS

0.0 STARS. DO NOT BUY THEY ARE A SCAM. I BOUGHT A \$50 GIFT CARD AT GAS STATION BACK IN SEPTEMBER AND IT WAS INSTANTLY COMPROMISED SO I CALLED CUSTOMER SUPPORT AND THEY WOULDNT HELP AT FIRST GOT MAD AT THEM TOLD THEM THEY HAD TO FIX IT THEY SAID OK THERE SENDING ME A NEW CARD IT WILL ARIVE IN 5-7 BUSSINESS DAYS, IT TOOK OVER 5 MONTHS JUST RECIEVED LESS A WEEK AGO AND THEY DIDNT SHIP TILL NOVEMBER 22 AND STILL 3 MONTHS, THE NUMBER RHEY GIVE IN LETTER DOESNT HAVE A ACTIVATION OPTION, CALLED CUSTOMER SUPPORT THEY SAY IT WAS USED WHEN IT HASNT BEEN ACTIVATED THEY WILL NOT HELP, I ASKED TO SPEAK TO A SUPERVISOR THEY JUST LEFT ME ON HOLD. DONT BUY, YOU'LL WILL NOT BE SBLE TO USE.

Date of experience: March 01, 2023

Useful
 Share



JC

1 review US



Feb 17, 2023

Vanilla Visa Gift Card - Right Wing Gear SCAM

Attempted to use a Vanilla gift card received two months ago. Card was denied. Checked card balance and found a single transaction for the total card amount to "rightwinggear.com". Date/Time stamp correlated with date and time of my attempted transaction. This is far to coincidental to not be some kind of coordinated scam involving both Vanilla and RWG!

Date of experience: February 17, 2023

Useful 1
 Share





DB
1 review 📍 US



Jan 27, 2023

Professional scammers

Got a \$100 gift card, went to use it next day, and it was declined. When I did some research I found out it was used in a different state the same day of purchase. Called customer service, said I needed to file dispute and would take up to 6 months to see an update. Complete trash and lost \$100.

Date of experience: September 17, 2022

👍 Useful 2 🔗 Share



Kevin
1 review 📍 US



Jan 19, 2023

Merry Christmas from Vanilla Visa!

Unbelievable! I got a \$100 card as a gift and attempted to use it a few times. It almost never worked. Eventually, I was able to use about \$8, but that was it. Someone else had already charged merchandise using the card. It looks like the card number must have been stolen or worse the company could be committing some kind of fraud. Attempts to contact the company to get a credit are not productive. The company tells you need to dispute the charges, which according to them takes 45 to 90 days. What a joke. They aren't trying to resolve anything. They just want you to go away.

Date of experience: December 24, 2022

👍 Useful 1 🔗 Share





46. Vanilla's low ratings and complaints are consistent across review sites. Pissedconsumer.com rates Vanilla 1.3 stars out of 5 based on 561 reviews⁷. The Better Business Bureau rates Vanilla 1.05 out of 5 based on 220 reviews⁸.

47. The stories are consistent: Purchasers and Recipients try to use their Cards and find that Unauthorized Users have almost instantly spent all or most of the Face Value. As explained below, that almost instant use is the key to understanding how Unauthorized Users steal Face Value and how Vanilla fails to prevent the theft.

///

///

⁷ <https://vanilla-gift.pissedconsumer.com/review.html> (last visited Mar. 29, 2023).

⁸ <https://www.bbb.org/us/ga/columbus/profile/credit-cards-and-plans/incomm-financial-services-inc-0743-4118/customer-reviews> (last visited Mar. 29, 2023).

1 **B. Vanilla is responsible for every possible explanation for how**
2 **Unauthorized Users obtain Card numbers and steal Cards' Face**
3 **Value.**

4 **B.1. In-store tampering with Physical Cards is likely not the cause.**

5 48. Early gift card fraud involved thieves tampering with the packaging
6 of Physical Cards in a store to open them and obtain the sixteen-digit card
7 number, CVV, and expiration date right off the back of the Physical Cards.

8 49. Here, such in-store tampering is not likely to be the cause of the
9 fraud. Vanilla packages its Physical Cards in sealed cardboard envelopes that a
10 vendor, Travel Tags, specifically designed to be tamper-proof.⁹ Travel Tags
11 explains:
12
13
14
15
16
17
18
19
20

21 ⁹ http://www.traveltags.com/assets/uploads/TT_specialtypacks_FINAL_woh.pdf
(last visited Mar. 29, 2023).



SECURE PACK

Our selection of Secure Packs for open and closed loop cards include several unique security features that create highly visible evidence of tampering prior to purchase.

- Multi-panel concepts
- Inner security slits
- Perforated tear strips
- Bar code window for scan activation
- Mag stripe on package for swipe activation
- Foil or spot foil capabilities
- Scratch-offs and security labels

1 50. Further, package tampering cannot explain how Unauthorized Users
2 are able to access E-Card information for fraudulent use.

3 **B.2. Vanilla's employees could be stealing Card information.**

4 51. Given that tampering with physical packaging doesn't explain the
5 widespread fraud endemic to Vanilla Cards, there are only three plausible
6 explanations as to how this widespread fraud, which seems unique to Vanilla
7 Cards, is occurring. The first and simplest possible explanation for the
8 widespread, unauthorized use of Card funds is that the Unauthorized Users are
9 Vanilla insiders who use their position within Vanilla to obtain access to Card
10 information to steal Face Value from Purchasers and Recipients.

11 52. If this is the case, Vanilla is responsible for failing to safeguard its
12 customers' Cards from its employees or contractors.

13 **B.3. Vanilla's insufficient data security could allow cybercriminals to**
14 **illegally access Vanilla's database of Card information.**

15 53. The second possible explanation is that Vanilla's electronic
16 databases of Card information have been illegally accessed by cybercriminals,
17 enabling Card information to be stolen for use by Unauthorized Users.

18 54. Illegal markets for Card information exist on the Dark Web, an
19 encrypted portion of the internet that is not indexed by search engines and only
20 accessible by means of special software, allowing users to remain anonymous.

1 55. Cybercriminals target gift card companies' data systems to steal
2 Card information that they can later sell on the Dark Web. *See e.g.*
3 <https://geminiadvisory.io/gift-card-shop-breached/> (reporting a 2021 attack on
4 Cardpool.com and the subsequent sale of 330,000 stolen numbers on the Dark
5 Web) (last visited Mar. 29, 2023).

6 56. If a cyberattack was the cause of Plaintiffs' losses, Vanilla is
7 responsible for those losses because it failed to implement adequate and industry-
8 standard data security to prevent a widespread data breach.

9 57. Vanilla can stop such attacks with reasonable investment in adequate
10 cybersecurity.

11 **B.4. Unauthorized Users may have Vanilla's formula for generating**
12 **Card information.**

13 58. The final possible explanation is that Vanilla uses an algorithmic
14 formula to create Card numbers, expiration dates, and CVVs, that Unauthorized
15 Users have deciphered this formula, and that Unauthorized Users use their own
16 algorithm to generate Card information.

17 59. Many Cards have the same first 12 digits, and only the last four are
18 randomized, making it easy for Unauthorized Users to guess or use computer
19 programs to discern the last four digits.

20 ///

21 ///

1 60. Unauthorized Users have been draining Card value for years. If a
2 cracked algorithm is to blame, Vanilla would need only establish a new algorithm
3 to stop the theft.

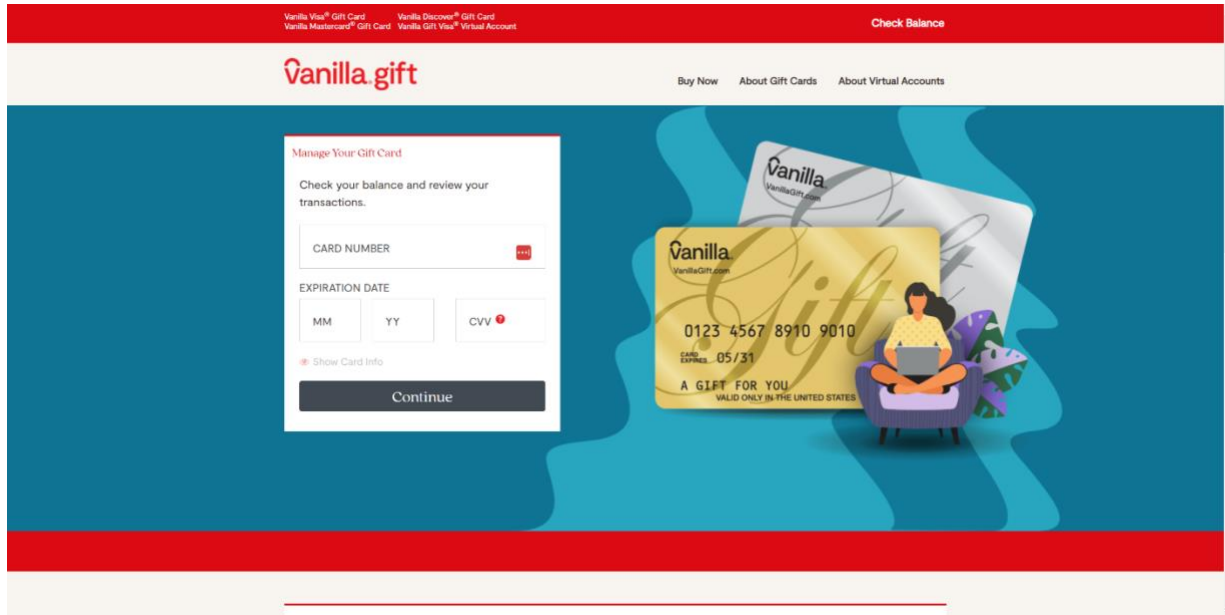
4 **B.5. Each possible explanation for the widespread, fraudulent use of**
5 **Face Value requires that Unauthorized Users exploit a security**
6 **flaw in Vanilla's systems.**

7 61. Each of the three possible explanations (and tampering with Physical
8 Card packaging) would only give Unauthorized Users unactivated Card numbers.

9 62. It is only after Cards are activated at the time of purchase, either in-
10 person at a store for Physical Cards or when a Recipient receives a link to the
11 Card information on Vanilla's website, that the Face Value is available for use.

12 63. Unauthorized Users are able to access and spend Face Value very
13 close in time to Card activation. The only way they can do that is if they are
14 watching Vanilla's website to see when Cards are activated.

15 64. Purchasers and Recipients can access the account balance of their
16 cards at <https://balance.vanillagift.com/#/>. The page looks like this:
17
18
19
20
21



65. Unauthorized Users use this site to check the validity of the Card information that they illegally obtain through one of the three methods described above and to learn when Cards are activated.

66. Before a Card is activated, when an Unauthorized User enters the Card information into Vanilla's site, the balance shows as zero because the Card does not have any purchasing power until activated.

67. To access and spend Face Value very close in time to Card activation, Unauthorized Users must continuously and remotely monitor the balances of unactivated Cards through Vanilla's website.

68. No human could monitor the balances of hundreds or thousands of unactivated Cards often enough to catch each Card's activation with the consistency that Unauthorized Users achieve.

1 69. Unauthorized Users use a computer program to constantly monitor
2 unactivated Cards for activation. Such programs repeatedly query
3 <https://balance.vanillagift.com/#/> looking for a balance on a previously
4 unactivated Card. As soon as a spendable balance shows up on a Card, the
5 program notifies Unauthorized Users, who then quickly spend that Face Value.

6 70. Vanilla could, but chooses not to, take steps to prevent Unauthorized
7 Users' computer programs from accessing <https://balance.vanillagift.com/#/>.

8 **C. Vanilla facilitates each of the three possible methods of Card fraud**
9 **because it allows Unauthorized Users to continuously, remotely, and**
10 **automatically monitor balances of unactivated Cards.**

11 71. Regardless of which method Unauthorized Users are employing to
12 obtain Vanilla's Card numbers, Unauthorized Users could not exploit their
13 wrongfully obtained Card information unless they know when Cards are
14 activated.

15 72. Unauthorized Users would not be able to determine when Cards are
16 activated without using automated computer programs.

17 ///

18 ///

19 ///

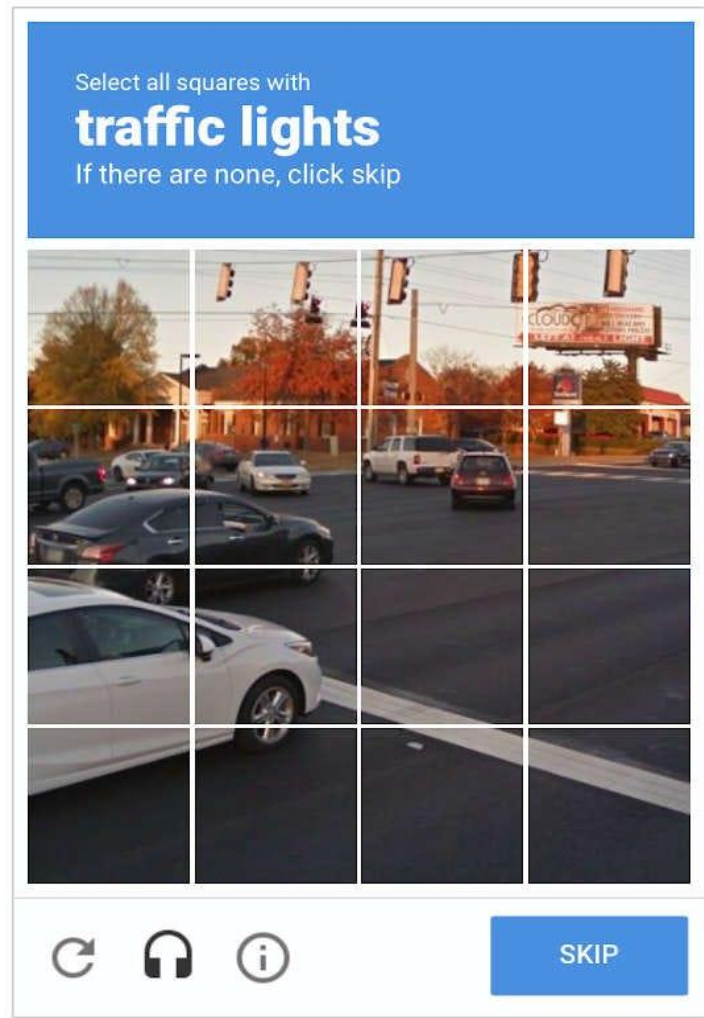
20 ///

21 ///

1 73. Online security tools exist that prevent access to websites by
2 automated computer programs. Since at least 2017, cybersecurity experts have
3 advocated using these tools to prevent criminal access to gift card balance-
4 checking sites.¹⁰

5 74. One of the most common such tools is CAPTCHA (Completely
6 Automated Public Turing test to tell Computers and Humans Apart), which
7 requires users to solve a visual puzzle that automated computer programs would
8 not be able to solve before allowing access to a website. An example of a
9 CAPTCHA appears below.

10
11
12
13
14
15
16
17
18
19
20 ¹⁰ Andy Greenberg, *Hacking Retail Gift Cards Remains Scarily Easy* (Aug. 31,
21 2017), <https://www.wired.com/story/gift-card-hacks/>, WIRED.COM (last visited
Mar. 29, 2023).



75. Implementing CAPTCHA or something similar on <https://balance.vanillagift.com/#/> would prevent Unauthorized Users from using automated computer programs to access the site to check balances, disrupting a key part of Unauthorized Users' fraudulent scheme to steal Face Value from Purchasers and Recipients.

76. Vanilla not only knows about the existence of tools like CAPTCHA, it also knows how those tools can be implemented to prevent malicious computer programs from accessing a balance inquiry site. Vanilla's Australian Card balance

inquiry site, <https://www.vanillabalance.com/cholder/>, shown below, utilizes CAPTCHA (“I’m not a robot”).¹¹

77. Employing CAPTCHA or a similar tool on its United States website would cost Vanilla money. Rather than spend that money to thwart Unauthorized Users, Vanilla chooses to shift the risk of loss to Purchasers and Recipients.

¹¹ Australia’s equivalent of the U.S. Securities Exchange Commission, the Australian Securities and Investments Commission (ASIC), regulates gift cards in Australia. ASIC regulates gift cards as credit cards, which may explain the extra security measures Vanilla takes on its Australian site.

1 78. Vanilla could also eliminate the balance inquiry website entirely and
2 substitute a phone system that could not be exploited by Unauthorized Users'
3 software. Building and maintaining such a phone system would cost Vanilla
4 money.

5 79. Vanilla could also, but does not, monitor its website for balance
6 inquiries on unactivated Cards. No legitimate Purchaser or Recipient would check
7 the balance of an unactivated Card because they do not have Card information
8 until after purchase when the Card has been activated. The only reason anyone
9 would monitor unactivated Card numbers is to steal the balance as soon as the
10 Card is activated.

11 80. Vanilla could then flag Card numbers that experience balance
12 checking prior to activation for automatic reimbursement should there be a claim
13 of fraud. Such monitoring would require investment into software and personnel,
14 reducing Vanilla's profit.

15 81. Thus, no matter what method of fraud Unauthorized Users are
16 employing to obtain Card numbers, Vanilla has the same fundamental security
17 problem: allowing Unauthorized Users to track the Card activation so that Cards
18 can be used by Unauthorized Users at or near the time of activation.

19 82. Vanilla and its substandard security measures discussed above are
20 responsible for the widespread, fraudulent depletion of Card funds regardless of
21 which of the three possible explanations is being exploited by Unauthorized

1 Users. In other words, because Unauthorized Users can track when Plaintiffs' and
2 Class Members' Cards are activated—as a direct result of Vanilla's failure to
3 prevent such tracking—Unauthorized Users deplete the Face Value of Plaintiffs'
4 and Class Members' Cards, and Plaintiffs and Class Members are unable to use
5 them. Plaintiffs' and Class Members' losses are, therefore, the direct and
6 proximate result of Vanilla's negligent, reckless, and/or willful security lapses.

7 83. Acknowledging and addressing the widespread fraudulent use of
8 Card funds would further cut into Vanilla's profit because it would also have to
9 reimburse Purchasers and Recipients for charges made by Unauthorized Users.
10 As explained below, Vanilla takes affirmative steps to avoid paying fraud losses.

11 **D. Vanilla fraudulently fails to inform Purchasers and Recipients of the**
12 **likelihood of theft, that it could remedy that theft but chooses not to,**
13 **and that if theft occurs, Vanilla will actively try to avoid**
14 **reimbursement.**

14 84. Vanilla knows that its Cards are extremely prone to access by
15 Unauthorized Users, and it knows that Unauthorized Users steal Face Value from
16 Purchasers and Recipients. Vanilla knows this, at least in part, because it received
17 hundreds if not thousands of complaints from its customers about depleted funds.

18 85. Vanilla also knows that it could substantially decrease the incidence
19 of Face Value theft if it chose to implement additional security protections.

20 Vanilla is not the only gift card company whose gift cards experience fraud.

21 However, based on investigation and belief, Vanilla is unique among its peers in

1 the incidence of fraud on its Cards. Yet Vanilla has apparently taken no steps to
2 follow industry standards in preventing that fraud and reimbursing consumers
3 who experience fraud.

4 86. Vanilla also fails to inform consumers about the prevalence of theft.
5 Vanilla's Physical Card packages contain no disclosure about the prevalence of
6 theft. They contain no disclosure that Physical Cards could be worth less than the
7 Face Value because of theft by Unauthorized Users. They contain no disclosure
8 that Vanilla could increase security measures for Cards but chooses not to
9 implement such measures, leaving Cards particularly vulnerable to fraudulent use.

10 87. Vanilla makes only two statements on its packaging that even
11 vaguely refer to the possibility of fraud: (1) "IF TAMPER EVIDENT, DO NOT
12 PURCHASE;" and (2) "For security purposes, please check that the underlined
13 portion of the number matches the number below."

14 88. By making only these two statements, Vanilla misleads consumers
15 into believing that (1) as long as there is no evidence of tampering on the
16 packaging, and (2) as long as the underlined portion of the card number matches
17 what is on the packaging, then its Cards are secure from fraud.

18 89. That belief, however, is untrue, as set forth above and below. Vanilla
19 omits any mention of the widespread fraud that its Cards experience from
20 Unauthorized Users and fails to disclose that there is a substantial risk that its
21 Cards will have less than their Face Value.

1 90. Vanilla’s website page on which it sells E-Cards contains no
2 mention of Unauthorized Users or theft of E-Card Face Value. Even if a
3 Purchaser sought out information about stolen gift cards in Vanilla’s Frequently
4 Asked Questions, those FAQs mention theft only in the context of a physically
5 stolen card and falsely suggests that Vanilla will provide replacement Cards to
6 Purchasers or Recipients for such theft¹²—though only if the individual still has
7 the card number, which seems unlikely in cases in which a physical card is stolen,
8 and impossible in cases in which an E-Card is depleted, as explained below. The
9 website contains no disclosure that Vanilla could increase security measures for
10 Cards but chooses not to implement such measures, leaving Cards particularly
11 vulnerable to fraudulent use. Vanilla has a “Security & Fees” portion of the FAQ
12 section on its website, but none of the listed questions has anything to do with
13 security—let alone Vanilla’s failure to implement reasonable security measures.

14 91. Perhaps most importantly, Vanilla fails to tell Purchasers and
15 Recipients either on the packaging of Physical Cards or on its website where it
16 sells E-Cards that it will not reimburse them if Unauthorized Users steal all or a
17 portion of Cards’ Face Value.

18 ///

19 ///

21 ¹² <https://balance.vanillagift.com/#/faq> (last visited Mar. 29, 2023).

1 **E. Vanilla takes affirmative steps to avoid reimbursing Purchasers and**
2 **Recipients for theft losses.**

3 92. As demonstrated by Plaintiffs' experiences and the internet reviews
4 above, Vanilla takes affirmative steps to avoid reimbursing Purchasers and
5 Recipients for theft losses. Vanilla uses long telephone hold times, nonresponsive
6 telephone operators, onerous and lengthy claims processes, and unfulfilled
7 promises of replacement Cards to discourage Purchasers and Recipients from
8 obtaining reimbursement.

9 93. After E-Card funds are expended/depleted, Recipients can no longer
10 access their E-Card number on Vanilla's website, making it more difficult for
11 them to seek redress. Even before E-Card Purchasers or Recipients get to
12 customer service, Vanilla takes steps to ensure that they lack the information they
13 need to be able to seek reimbursement: the E-Card number. After an E-Card's
14 Face Value is depleted, the card number is no longer available to the intended
15 user. The card number does not appear in the email that Vanilla sends to an E-
16 Card Purchaser or Recipient, and it is visible only when an E-Card user opens the
17 link to the E-Card that Vanilla sends them via email.

18 94. Once the Face Value of an E-Card is depleted, however, clicking the
19 link to an E-Card does nothing; the user is unable to see what the E-Card's
20 number was, and is thus unable to provide the E-Card number to Vanilla's
21 customer service (or anyone else).

1 95. Plaintiff Clark spent 30 hours trying to obtain reimbursement from
2 Vanilla. Plaintiff Stewart spent 50 hours. Most people would have stopped long
3 before that. In short, Vanilla gives Purchasers and Recipients the runaround until
4 they give up.

5 96. Vanilla omits these facts because it knows that no reasonable
6 consumer would buy a Card for the Face Value, plus taxes and Vanilla's fees if
7 they knew there was a substantial chance that the Card will contain less
8 purchasing power than the Face Value because Vanilla's products are plagued by
9 theft. Nor would a reasonable consumer buy a Card for the Face Value, plus
10 Vanilla's fee, if they knew that even after Unauthorized Users depleted the Face
11 Value of the Card because of Vanilla's failure to secure that Face Value, Vanilla
12 would intentionally erect barriers to reimbursement.

13 97. Furthermore, when Purchasers and Recipients give up on getting a
14 reimbursement from customer service, it is to Vanilla's benefit. While it was
15 Vanilla's failure to implement reasonable security measures that caused
16 Purchaser's and Recipient's losses, Vanilla avoids reimbursing those individuals
17 for those losses, reaping direct monetary benefit.

18 98. Adequate disclosures and listing the above-described omitted facts
19 (§§ 11–13) on Physical Cards' packaging or on the website selling E-Cards,
20 explaining the true risk that Cards may not have purchasing power equal to the
21 Face Value, would substantially reduce Vanilla's sales or halt them entirely. No

1 reasonable Purchaser would purchase Cards if they knew the facts Vanilla omits.

2 If no Purchasers purchased Cards, no Recipients would receive Cards.

3 **CLASS ALLEGATIONS**

4 99. Under Federal Rule of Civil Procedure 23(b)(2) and (b)(3), Plaintiffs
5 bring this action as a class action on behalf of the Classes of persons defined as:

6 **California Recipient Class:** All California residents who are
7 Recipients of any Vanilla gift Card that, through no action by the
8 Recipient, had less than the Face Value amount of funds when they
9 went to use the Card.

10 **California Purchaser Class:** All California residents who are
11 Purchasers of a Vanilla gift Card that, through no action by the
12 Purchaser or Recipient, had less than the Face Value amount of funds
13 when either the Purchaser or a Recipient went to use the funds on the
14 Card.

15 100. Excluded from the Classes are Vanilla and any entities in which it
16 has a controlling interest, Vanilla's agents and employees, the Judge to whom this
17 action is assigned, and any member of the Judge's staff and immediate family.

18 101. **Numerosity.** The Classes are so numerous that joinder of all
19 members is impracticable. Plaintiffs are informed and believe, based on publicly
20 available information, that there are tens of thousands of Class Members in both
21 the California Recipient Class and the California Purchaser Class, making joinder
impracticable. Those individuals' identities are available through Vanilla's
records, and Class Members may be notified of the pendency of this action by
recognized, Court-approved notice methods. Moreover, the disposition of the

1 claims of the Classes in a single action will provide substantial benefits to all
2 parties and the Court.

3 102. **Commonality.** Plaintiffs and the Classes share a number of common
4 questions of law and fact, including—but not limited to—the following:

- 5 a. Whether Vanilla marketed and sold Cards as purporting to
6 contain the Face Value of the Cards while knowing that a
7 substantial portion of their Cards in fact held less than the Face
8 Value;
9
10 b. Whether Vanilla withheld information from Purchasers and
11 Recipients about whether its Cards commonly hold less than their
12 Face Value;
13
14 c. Whether Vanilla failed to take reasonable, industry-standard
15 measures to safeguard its Cards against fraud and/or other
16 security threats;
17
18 d. Whether Vanilla withheld information from Purchasers and
19 Recipients about its failure to take reasonable, industry-standard
20 measures to safeguard its Cards against fraud and/or other
21 security threats;

- e. Whether Vanilla failed to implement additional security measures for its Cards once it was aware of instances of fraud on those Cards;
- f. Whether Vanilla failed to provide refunds or replacement funds for Cards that had funds wrongfully depleted;
- g. Whether Vanilla failed to provide refunds of fees associated with the purchase of Cards that had funds wrongfully depleted;
- h. Whether Vanilla employed a prohibitive and discouraging process of handling reports of wrongfully depleted funds in an effort to avoid paying refunds or providing replacement funds;
- i. Whether Vanilla withheld information from Purchasers and Recipients about its prohibitive and discouraging process of handling reports of wrongfully depleted funds;
- j. Whether Vanilla is liable for violating the California Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750 *et seq.*;
- k. Whether Vanilla is liable for violating the California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200 *et seq.*;
- l. Whether Vanilla was unjustly enriched by the acts and omissions alleged herein;

1 m. Whether Plaintiffs and the Classes are entitled to punitive
2 damages; and

3 n. Whether other, additional relief is appropriate and the nature of
4 such relief.

5 103. **Typicality.** Plaintiffs' claims are typical of the claims of the Classes.
6 Plaintiffs' claims, like the claims of the Classes, arise out of the same common
7 course of Vanilla's conduct. Specifically, as a Recipient whose Card contained
8 less than the Face Value, Recipient Plaintiffs assert claims that are typical of each
9 Recipient Class Member whose Card contained less than the Face Value. As a
10 Purchaser of a Card that contained less than the Face Value, Purchaser Plaintiffs
11 assert claims that are typical of each Purchaser Plaintiff who paid fees for a Card
12 with full Face Value that could not be used by the Recipient.

13 104. **Adequacy.** Plaintiffs will fairly and adequately protect the interests
14 of the Classes. Plaintiffs have retained competent and capable attorneys who are
15 experienced trial lawyers with significant experience in complex and class action
16 litigation, including consumer class actions. Plaintiffs and their counsel are
17 committed to prosecuting this action vigorously on behalf of the Classes and have
18 the financial resources to do so. Neither Plaintiffs nor their counsel have interests
19 that are contrary to or that conflict with those of the proposed Classes.

20 ///

21 ///

1 **105. Predominance Under Fed. R. Civ. P. 23(b)(3).** Vanilla has
2 engaged in a common course of conduct toward Plaintiffs and the Classes. The
3 common issues arising from this conduct that affect Plaintiffs and the Classes
4 predominate over any individual issues. Adjudication of these common issues in a
5 single action has important and desirable advantages of judicial economy.

6 **106. Superiority Under Fed. R. Civ. P. 23(b)(3).** A class action is the
7 superior method for the fair and efficient adjudication of this controversy. Class-
8 wide relief is essential to compel Vanilla to comply with applicable law. The
9 interest of individual Class members in individually controlling the prosecution of
10 separate claims against Vanilla is small because the damages in any individual
11 action are small. Class treatment is superior to multiple individual suits or
12 piecemeal litigation because it conserves judicial resources, promotes consistency
13 and efficiency of adjudication, provides a forum for small claimants, and deters
14 illegal activities. There will be no significant difficulty in the management of this
15 case as a class action.

16 **107. Appropriateness of Final Injunctive Relief Under Fed. R. Civ. P.**
17 **23(b)(2).** The prosecution of separate actions by individual Class Members would
18 create a risk of inconsistent or varying adjudications with respect to individual
19 Class Members that would establish incompatible standards of conduct for
20 Vanilla. Such individual actions would create a risk of adjudications that would
21 be dispositive of the interests of other Class Members and would impair those

1 interests. Vanilla has acted and/or refused to act on grounds generally applicable
 2 to the Classes, making final injunctive relief or corresponding declaratory relief
 3 appropriate.

4 108. Injunctive relief is particularly necessary in this case because: (1)
 5 Plaintiffs and the Classes want to use the Face Value of their Cards; (2) Plaintiffs
 6 and putative Class Members may purchase or receive Cards in the future; (3)
 7 Vanilla has not cured the security defect that is leading to Cards holding less than
 8 their Face Value; and (4) Plaintiffs and the Classes do not have the ability to
 9 determine whether Vanilla intends to (a) remedy the security defect(s), or (b)
 10 continue to conceal material information about whether the Cards hold their full
 11 Face Value. Indeed, Plaintiffs and putative Class Members expect that without
 12 injunctive relief, Vanilla will continue to sell Cards that will have less than Face
 13 Value when Recipients use, or try to use, them and will continue to conceal that
 14 fact.

15 **CLAIMS FOR RELIEF**

16 **First Claim for Relief**

Violations of the Consumers Legal Remedies Act

Cal. Civ. Code §§ 1750, *et seq.*

17 *(On Behalf of Plaintiffs Clark, Stewart, and Thompson and the California*
 18 *Purchaser Class)*

19 109. Plaintiffs individually and on behalf of the Class reallege and
 20 incorporate by reference each and every allegation set forth above.

1 110. The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*
2 (“CLRA”), is a comprehensive statutory scheme liberally construed and applied
3 to protect consumers against unfair and deceptive business practices in
4 connection with the conduct of businesses providing goods, property, or services
5 to consumers primarily for personal, family, or household use.

6 111. Vanilla Cards constitute “goods” as defined in California Civil Code
7 §§ 1761(a)–(b).

8 112. Plaintiffs and the putative California Purchaser Class Members are
9 “consumers” as defined in California Civil Code § 1761(d), and they and Vanilla
10 have engaged in a “transaction” as defined in California Civil Code § 1761(e).

11 113. Plaintiffs, Purchaser Class Members, and Vanilla are each a “person”
12 as defined in California Civil Code § 1761(c).

13 114. As alleged herein, Vanilla made numerous omissions concerning the
14 security of its Cards and concerning the Face Value of its Cards, its security
15 practices, and its reimbursement practices, while collecting fees from Purchasers
16 to issue, facilitate, and process the Cards, including the use of funds on the Cards.

17 115. Vanilla engaged in unfair or deceptive acts or practices in violation of
18 Civil Code § 1770. Specifically, Vanilla’s acts, practices, and omissions were
19 intended to, and did result in, the sale of goods in violation of Civil Code § 1770.
20 Vanilla violated the CLRA by:
21

- a. Representing that its goods and services have characteristics, uses, benefits, or quantities that they do not have; and
- b. Representing that its goods and services are of a particular standard, quality, or grade when they were not.

116. As alleged herein, Vanilla distributed, marketed, and advertised its goods as “gift cards” holding the worth of their Face Value while deliberately concealing material facts about, and central to the function of, those goods and services. Vanilla’s omissions were material because they were likely to deceive reasonable consumers into believing they were purchasing Cards that would have purchasing power equal to the Face Value when first used by the intended Recipient. Plaintiffs and putative Purchaser Class Members had no way of unraveling Vanilla’s deception on their own, and they could not have known the truth about whether Vanilla’s Cards were likely to retain their Face Value after purchase. Had Vanilla disclosed that its Cards were particularly vulnerable to fraud because of Vanilla’s inadequate security measures such that they were likely to hold less than their Face Value, and that Vanilla would not reimburse for theft loss of Face Value, Plaintiffs and Purchaser Class Members would not have purchased them.

117. Vanilla owed Plaintiffs and Purchaser Class Members a duty to disclose the truth about the value of the Cards because Vanilla: (1) possessed exclusive knowledge of those matters, (2) was engaging in purchase transactions

1 with Plaintiffs and Purchaser Class Members as “consumers” of the Cards, and
2 (3) intentionally concealed the foregoing from Plaintiffs and Purchaser Class
3 Members.

4 118. As a direct and proximate cause of Vanilla’s violations of the CLRA,
5 Plaintiffs and the Purchaser Class have suffered injury-in-fact and actual damages
6 resulting from Vanilla’s material omissions. Plaintiffs and Purchaser Class
7 Members would not have purchased Vanilla Cards had Vanilla disclosed that the
8 funds were likely to be depleted by fraudulent use and theft. Vanilla knew the
9 Cards were insecure because of Vanilla’s inadequate security measures, and
10 Vanilla did not inform consumers that Card funds would be improperly depleted,
11 leaving consumers to fend for themselves in discovering the problem and
12 attempting to remedy these issues.

13 119. The facts Vanilla omitted and concealed from Plaintiffs and
14 Purchaser Class Members are material because a reasonable consumer would
15 have considered them important in deciding whether to purchase a Vanilla gift
16 Card and/or deciding how much to purchase in Face Value amount(s), which
17 determines the fee amount collected by Vanilla.

18 120. Plaintiffs sent a demand letter to Vanilla via certified mail pursuant
19 to the requirements of the CLRA, providing the notice required by Cal. Civ. Code
20 § 1782(a). Vanilla has not corrected or otherwise rectified the harm alleged by
21 Plaintiffs in their letter or the initial Complaint within the statutorily required

thirty-day period. Therefore, Plaintiffs seek monetary damages against Vanilla pursuant to California Civil Code §§ 1781 and 1782.

121. Plaintiffs also seek an order awarding costs and attorney fees pursuant to California Civil Code § 1780(e).

Second Claim for Relief
Violations of the California Unfair Competition Law
Cal. Bus. & Prof. Code §§ 17200 *et seq.* – Unlawful Business Practices
(On Behalf of Plaintiffs Clark, Stewart, and Thompson and the Purchaser Class)

122. Plaintiffs individually and on behalf of the Purchaser Class reallege and incorporate by reference each and every allegation set forth above.

123. Plaintiffs, Purchaser Class Members, and Vanilla are each a “person” under Cal. Bus. & Prof. Code § 17201.

124. California Business and Professions Code §§ 17201, *et seq.* prohibits acts of unfair competition, which includes unlawful business practices.

125. Vanilla engaged in unlawful acts and practices with respect to its payment card services by establishing and maintaining sub-standard security practices and procedures for protecting the Face Value of its Cards; by representing that its goods and services have characteristics, uses, benefits, or quantities that they do not have in violation of Civil Code § 1770; and by representing that its goods and services are of a particular standard, quality, or grade when they were not, which violates California Civil Code § 1770.

1 126. Vanilla's unlawful acts and practices include violations of California
2 Civil Code Sections 1770(a)(5) and (a)(7).

3 127. Based on information and belief, Vanilla did process and continues
4 to process purchases of its Cards with purchasing fees, did issue and continues to
5 issue Physical Cards or electronic E-Cards after purchase, and did process and
6 continues to process spending transactions for funds loaded on its Cards using
7 electronic and computer systems. Vanilla also did maintain and continues to
8 maintain electronic systems that store information about the Face Value of Cards
9 and available funds. Thus, Vanilla knew or should have known that it did not
10 employ reasonable, industry-standard, and appropriate security measures that
11 would have kept the Face Value of the Cards secure and prevented the loss or
12 misuse of the Cards' funds. Vanilla did not disclose to Plaintiffs and Purchaser
13 Class Members that its processing and data systems were insecure and contained
14 a security flaw that allowed Unauthorized Users to steal Face Value. Thus,
15 Vanilla represented that its goods and services have characteristics, uses, benefits,
16 or quantities that they do not have and represented that its goods and services are
17 of a particular standard, quality, or grade when they were not, which violates
18 California Civil Code Section 1770.

19 128. Plaintiffs and Purchaser Class Members were reasonable to assume,
20 and did assume, that Vanilla would take appropriate measures to keep the Face
21 Value of Cards secure and safe. Vanilla was in sole possession of and had a duty

1 to disclose the material information that the Face Value of Cards was vulnerable
2 to fraudulent use and theft because Vanilla's security measures were inadequate
3 and below industry standards. Vanilla did not disclose at any time that the Face
4 Value of Cards was left particularly vulnerable to fraudulent use and theft.

5 129. Vanilla knew or should have known that its computer systems and
6 data security practices were inadequate to safeguard the Face Value of their Cards
7 and that the risk of theft was, therefore, high. Vanilla's actions in engaging in the
8 herein-described unlawful practices and acts were negligent, knowing and willful,
9 and/or wanton and reckless with respect to the rights of the California Purchaser
10 Class.

11 130. Because Vanilla is in the business of issuing payment gift cards as
12 methods of payment after storing purchased funds, the Purchaser Plaintiffs and
13 Class Members relied on Vanilla to advise the public if its processing and data
14 systems were not secure and that Card funds could thereby be compromised.

15 131. When purchasing Vanilla's Cards, Plaintiffs and Purchaser Class
16 Members relied upon Vanilla's direct and indirect representations regarding its
17 data security, including its failure to alert consumers that its Cards were not
18 secure and, thus, were vulnerable to improper use of funds by persons other than
19 the Recipients.
20
21

1 132. Had Vanilla disclosed that its systems were insecure and, thus,
2 vulnerable to fraudulent use and theft, Plaintiffs and Purchaser Class Members
3 would not have purchased Vanilla's Cards.

4 133. As a direct result of their reliance on Vanilla to be truthful and
5 forthcoming about the vulnerability of its data systems and the characteristics of
6 the Cards it sold, Plaintiffs and Purchaser Class Members purchased Vanilla
7 Cards that did not retain their Face Value, causing Plaintiffs and Purchaser Class
8 Members to suffer damages.

9 134. As a direct and proximate cause of Vanilla's unfair and unlawful
10 methods and practices of competition, Plaintiffs and Purchaser Class Members
11 suffered actual damages including, but not limited to: damages arising from the
12 unauthorized charges on their Cards if they are Recipients of Cards they
13 purchased; damages arising from their inability to use their Cards because the
14 funds were depleted through fraudulent use if they are Recipients of Cards they
15 purchased; damages from lost time and effort to mitigate the actual and potential
16 impact of the improperly depleted funds by contacting, or trying to contact,
17 Vanilla to remedy the issue(s); and fees Purchaser Class Members paid for Cards
18 that did not have the characteristics, uses, benefits, or quantities that Vanilla
19 represented they would have.
20
21

135. Plaintiffs Stewart and Thompson want to and would purchase and use Vanilla Cards in the future if Vanilla remedied its security practices and/or reimbursed customers when fraud occurs.

136. As a proximate result of their unlawful practices, Vanilla has been unjustly enriched and should be required to make restitution to Plaintiffs and Purchaser Class Members pursuant to §§ 17203 and 17204 of the California Business & Professions Code, disgorgement of all profits accruing to Vanilla because of its unfair business practices, declaratory relief, attorney's fees and costs (pursuant to Cal. Code Civ. Proc. §1021.5), and injunctive or other equitable relief.

Third Claim for Relief
Violations of the California Unfair Competition Law
Cal. Bus. & Prof. Code §§ 17200 *et seq.* – Unfair Business Practices
(On Behalf of Plaintiffs Clark, Stewart, and Thompson and the Purchaser Class)

137. Plaintiffs individually and on behalf of the Purchaser Class reallege and incorporate by reference each and every allegation set forth above.

138. Vanilla engaged in unfair business practices by marketing Cards as “gift cards” holding the worth of their Face Value while knowing that Cards are not likely to retain the Face Value when used by Recipients; by failing to secure the Face Value of the Cards and using sub-standard security practices and procedures; by soliciting and collecting monies, including fees, from Plaintiffs and Purchaser Class Members with knowledge that the Face Value of the Cards

1 would not be adequately protected; and by intentionally erecting barriers through
2 difficult and time-consuming customer service processes to prevent consumers
3 from recouping the Face Value of Cards.

4 139. Plaintiffs and Purchaser Class Members were entitled to assume, and
5 did assume, that Vanilla would take appropriate measures to keep the Face Value
6 of Cards secure and safe. Vanilla was in sole possession of and had a duty to
7 disclose the material information that the Face Value of Cards was particularly
8 vulnerable to fraudulent use and theft because Vanilla's security measures were
9 inadequate and flawed. Vanilla did not disclose at any time that the Face Value of
10 Cards was particularly vulnerable to fraudulent use and theft.

11 140. The unfair acts and practices described above were immoral,
12 unethical, oppressive, unscrupulous, unconscionable, and/or substantially
13 injurious to Plaintiffs and Purchaser Class Members.¹³ These unfair acts and
14 practices were also likely to deceive the public into believing they were
15 purchasing Cards carrying the purchase power of their Face Value when they
16 were not. The harm these practices caused to Plaintiffs and the Purchaser Class
17 outweighed their utility, if any.

18
19
20
21

¹³ While the Court did not adopt this alleged theory of liability for Plaintiffs' UCL claims in deciding Defendant's Motion to Dismiss the First Amended Complaint, Plaintiffs state these allegations here again to preserve the issue for any necessary appeal.

1 141. California has clear legislative policy requiring reasonable data
2 security practices for the Cards' numbers. CAL. CIV. CODE § 1798.100(e) ("A
3 business that collects a consumer's personal information shall implement
4 reasonable security procedures and practices . . . to protect the personal
5 information from unauthorized or illegal access, destruction, use, modification, or
6 disclosure in accordance with Section 1798.81.5."); § 1798.81.5 ("[T]he purpose
7 of this section is to encourage businesses that own, license, or maintain personal
8 information about Californians to provide reasonable security for that
9 information."); § 1798.81.5(d)(1)(A)(iii) (defining "personal information" to
10 include credit card numbers).

11 142. Vanilla knows or should know that its computer systems and data
12 security practices are and were flawed and inadequate to safeguard the Face
13 Value of the Cards and that the risk of theft was high. Vanilla's actions in
14 engaging in the above-described unfair practices and acts were, therefore,
15 negligent, knowing and willful, and/or wanton and reckless with respect to the
16 rights of the Purchaser Class.

17 143. Had Vanilla disclosed to Plaintiffs and Purchaser Class Members
18 that its systems were not secure and, thus, vulnerable to fraudulent use and theft,
19 Plaintiffs and Purchaser Class Members would not have purchased and/or used
20 Vanilla's Cards.
21

1 144. As a direct and proximate result of Vanilla's unfair practices and
 2 acts, Plaintiffs and Purchaser Class Members were injured and lost money or
 3 property, including but not limited to the fees received by Vanilla for its products
 4 and services, the loss of their legally-protected interest in the Face Value of the
 5 Cards, and additional losses described herein.

6 145. Plaintiffs Stewart and Thompson want to and would purchase and
 7 use Vanilla Cards in the future if Vanilla remedied its security practices and/or
 8 reimbursed customers when fraud occurs.

9 146. Plaintiffs and Purchaser Class Members seek relief under California
 10 Business and Professions Code Section 17200, *et. seq.*, including, but not limited
 11 to, restitution to Plaintiffs and the Purchaser Class Members of money that
 12 Vanilla acquired by means of its unfair business practices, disgorgement of all
 13 profits accruing to Vanilla because of its unfair business practices, declaratory
 14 relief, attorney fees and costs (pursuant to California Code of Civil Procedure
 15 Section 1021.5), and injunctive or other equitable relief.

16
 17 **Fourth Claim for Relief**
 18 **Violations of the California Unfair Competition Law**
 19 **Cal. Bus. & Prof. Code §§ 17200 *et seq.* – Unfair Business Practices**
 20 *(On Behalf of Plaintiffs Cooper and Manier and the Recipient Class)*

21 147. Plaintiffs individually and on behalf of the Recipient Class reallege
 and incorporate by reference each and every allegation set forth above.

1 148. Vanilla engaged in unfair business practices by knowingly marketing
2 Cards as “gift cards” holding the worth of their Face Value, all while knowing
3 that Cards are not likely to retain the Face Value when used by Recipients; by
4 failing to secure the Face Value of the Cards through sub-standard security
5 practices and procedures; and by intentionally erecting barriers through difficult
6 and time-consuming customer service processes to prevent Recipients from
7 recouping the Face Value of Cards.

8 149. The unfair acts and practices described above were immoral,
9 unethical, oppressive, unscrupulous, unconscionable, and/or substantially
10 injurious to Plaintiffs and Recipient Class Members.¹⁴ These unfair acts and
11 practices were also likely to deceive the public into believing they were receiving
12 Cards carrying the purchase power of their Face Value when they were not. The
13 harm these practices caused to Plaintiffs and Recipient Class Members
14 outweighed their utility, if any.

15 150. California has clear legislative policy requiring reasonable data
16 security practices for the Cards’ numbers. CAL. CIV. CODE § 1798.100(e) (“A
17 business that collects a consumer’s personal information shall implement
18 reasonable security procedures and practices . . . to protect the personal
19 information from unauthorized or illegal access, destruction, use, modification, or
20

21 ¹⁴ See footnote 13, *supra*.

1 disclosure in accordance with Section 1798.81.5.”); § 1798.81.5 (“[T]he purpose
2 of this section is to encourage businesses that own, license, or maintain personal
3 information about Californians to provide reasonable security for that
4 information.”); § 1798.81.5(d)(1)(A)(iii) (defining “personal information” to
5 include credit card numbers).

6 151. Vanilla knows or should know that its computer systems and data
7 security practices are and were inadequate to safeguard the Face Value of the
8 Cards and that the risk of theft was high because those security practices are
9 flawed. Vanilla’s actions in engaging in the above-described unfair practices and
10 acts were, therefore, negligent, knowing and willful, and/or wanton and reckless
11 with respect to the rights of the Recipient Class.

12 152. As a direct and proximate result of Vanilla’s unfair practices and
13 acts, Plaintiffs and Recipient Class Members tried to make purchases using the
14 Cards only to find that the Cards did not retain their Face Value, causing them to
15 suffer damages. As a direct and proximate result of Vanilla’s unfair practices and
16 acts, Plaintiffs and Recipient Class Members were injured and lost money or
17 property, including but not limited to the loss of their legally-protected interest in
18 the Face Value of the Cards; damages arising from their inability to use their
19 Cards because the funds were depleted through fraudulent use, including being
20 responsible to pay for items and/or services when a Card is declined due to
21 insufficient Face Value funds or having to forego purchases when a Card is

1 declined; damages from lost time and effort to mitigate the actual and potential
2 impact of the improperly depleted funds by contacting, or trying to contact,
3 Vanilla to remedy the issue(s) and recoup the Face Value of the Cards; and
4 additional losses described above.

5 153. Plaintiffs Cooper and Manier want to and would purchase and use
6 Vanilla Cards in the future if Vanilla remedied its security practices and/or
7 reimbursed customers when fraud occurs.

8 154. The Plaintiffs and Recipient Class Members seek relief under
9 California Business and Professions Code Section 17200, *et. seq.*, including, but
10 not limited to, restitution to the Plaintiffs and Recipient Class Members of money
11 or property that Vanilla acquired by means of its unfair business practices,
12 disgorgement of all profits accruing to Vanilla because of its unfair business
13 practices, declaratory relief, attorney fees and costs (pursuant to California Code
14 of Civil Procedure Section 1021.5), and injunctive or other equitable relief.

15
16 **Fifth Claim for Relief**
Unjust Enrichment

17 *(On Behalf of Plaintiffs Clark, Stewart, and Thompson and the Purchaser Class)*

18 155. Plaintiffs individually and on behalf of the Purchaser Class reallege
19 and incorporate by reference each and every allegation set forth above.

20 156. Vanilla receives the benefit of processing fees that it collects in
21 conjunction with the purchase of Cards online and at retail stores.

1 157. Vanilla directly, or indirectly, operates a scheme to deceive the
2 public to collect fees for its own business purposes. Vanilla knowingly and
3 intentionally engages in these deceptive practices.

4 158. Vanilla operated a fraud on the public, acting to hide that its Cards
5 would not retain their Face Value because of its inadequate data security
6 practices and that Vanilla would not reimburse for theft loss.

7 159. Plaintiffs and Purchaser Class Members suffered ascertainable loss
8 and actual damages as a direct and proximate result of Vanilla's concealment
9 and failure to disclose material information.

10 160. Vanilla has knowledge of said benefits received at Plaintiffs' and
11 Purchaser Class Members' expense.

12 161. As a direct and proximate result of Vanilla's unjust enrichment,
13 Plaintiffs and Purchaser Class Members are entitled to restitution, restitutionary
14 disgorgement, and damages, in an amount to be proven at trial.

15
16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs, on behalf of themselves and the Classes,
18 respectfully request that the Court enter judgment in their favor that:

19 A. Certifies the Classes requested, appoints the Plaintiffs as Class
20 Representatives, and appoints their Counsel as Class Counsel;

1 B. Awards the Plaintiffs and Class Members appropriate monetary
2 relief, including actual and statutory damages, restitution, and disgorgement;

3 C. Enters an injunction against Vanilla's deceptive trade practices,
4 requiring that Vanilla implement and maintain adequate security measures to
5 protect the Face Value of Cards from Unauthorized Users;

6 D. Awards Plaintiffs and the Classes pre- and post-judgment interest,
7 reasonable attorney fees, costs, and expenses as allowable by law; and

8 E. Awards such other and further relief as this Court may deem just
9 and proper.

10
11 **JURY TRIAL DEMAND**

12 Plaintiffs demand a trial by jury on all issues so triable.

13
14 DATED this 7th day of August, 2023.

15 Respectfully submitted,

16 **LIPPSMITH LLP**

17 By: /s/ Graham B. LippSmith
18 GRAHAM B. LIPPSMITH
19 MARYBETH LIPPSMITH
20 JACLYN L. ANDERSON
21

TOUSLEY BRAIN STEPHENS PLLC

By: /s/ Jason T. Dennett

JASON T. DENNETT, WSBA #30686

Pro Hac Vice

KALEIGH N. BOYD, WSBA #52684,

Pro Hac Vice

Attorneys for Plaintiffs and the Putative Classes

CERTIFICATION

Pursuant to Local Rule 5-4.3.4, I hereby attest that concurrence of the filing of the foregoing **SECOND AMENDED CLASS ACTION COMPLAINT** has been obtained.

/s/ Graham B. LippSmith
Graham B. LippSmith